



Michigan Supreme Court
State Court Administrative Office
Trial Court Services Division
Michigan Hall of Justice
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August 23, 2007

TO: Chair: George M. Strander, Ingham County Probate Court
Douglas G. Chalgian, Elder Law Section
Pamela Jarvis, Barry County Probate Court
Hon. R. Terry Maltby, Sanilac County Probate Court
Michael J. McClory, Wayne County Probate Court
Harold G. Schuitmaker, Probate and Estate Planning
Hon. Kenneth Tacoma, Wexford County Probate Court
Joan Von Handorf, Probate and Estate Planning
Velma Weston, Kalamazoo County Probate Court

FROM: Amy L. Byrd

RE: Materials for September 6, 2007 Michigan Court Forms Committee Meeting

PLACE: State Court Administrative Office (Conference Room 5N-58), Lansing (map enclosed)

Below is the agenda for the September 6 meeting for the Probate Section of the Michigan Court Forms Committee. The meeting starts at 9:30 a.m. and ends at 3:30 p.m. **Luncheon reservations have been made for you; if you cannot attend, please contact me at least 2 days before the meeting.** Please note that we are located at 925 W. Ottawa. A map has been provided.

Although documentation is provided with the agenda, it would be helpful to bring a copy of the estates and protected individuals code, the mental health code, and the Michigan Court Rules.

A. Notice of Minor Corrections

Forms requiring minor changes, such as spelling, citations, grammar, punctuation, etc., will be corrected by the State Court Administrative Office. These forms will not be provided with the agenda materials and do not need to be discussed or approved by the Forms Committee. However, any of these forms will be discussed if members raise substantive issues with the SCAO before the day of the meeting. The following forms will be corrected and distributed in December 2007: PC 548, PC 551, PC 553, PC 554, PC 555, PC 556, PC 560, PC 561, PC 562, PC 563, PC 563a, PC 566, PC 579, PC 580, PC 588, PC 594, PC 596, PC 611, PC 613, PC 614, PC 615, PC 624, PC 626, PC 628, PC 629, PC 632, PC 636, PC 638, PC 643, PC 644, PC 655, PC 656, PC 658, PC 661, PC 664, and PC 665.

B. General Requests

1. Notary

A request has been made to include a place for the printed name of the notary in situations where the notary does not use a stamp. This would affect any form with a notarization. Is this something the Committee thinks is necessary?

2. MCL 700.1309, Appointment of Special Fiduciary

The appointment of a special fiduciary, as provided by this general statute, is found on a number of forms; however, the cite is not included on the forms. Is it necessary or desirable to add the cite to these forms? Affected forms are PC 558, PC 559, PC 604, PC 605, PC 607, PC 638, PC 638a, and PC 640. During the 30-day public comment period, Cindy Rude of Calhoun responded that it is helpful to have MCL cites on the court forms.

C. General and Miscellaneous Forms

3. PC 577, Inventory

The form was recently revised to comply with an amendment to MCR 5.307, effective September 1, 2007. A request has been made by the Probate and Estate Planning Section of the State Bar of Michigan to further revise the form in order that joint property on a conservatorship inventory may be valued at 100% of its value, with information about the other joint owners provided in the description of the property. A draft is provided.

Also, Terry Beagle of Saginaw County Probate Court asks whether the form should include space for indicating proof of the latest SEV at the date of the decedent's death and the value of other property, such as an auto. Finally, should the form indicate that any property over a certain amount, such as \$500.00, be appraised?

During the 30-day public comment period, Cindy Rude of Calhoun responded that their "staff liked the idea of having separate inventory forms for estates (from date of death) and conservatorships (from date of qualification) with a column for the type of ownership. (This appeared to be a proposal from the draft provided.) Other comments: Inventory - Decedent's Estate: No need for proof of SEV (no statute or court rule support), but there is a statutory requirement to include amount of liens, so a column for that might be helpful, keeping in mind that it will not affect the gross value for determining inventory fee, but will affect the net value for heirs/devisees. Also, no statute or court rule support for requiring appraisal. Inventory - Conservatorships: Same comments for proof of SEV, value or appraisal. Would prefer a place to insert the date of appointment to clear up confusion regarding definition of 'date of qualification'."

4. PC 584, Account of Fiduciary

A client of Lexis-Nexis has indicated that the Wayne County Probate Court does not want the itemization for Schedules A and B to go entirely on additional sheets when additional

sheets are necessary, despite instructions to the contrary. Should the instruction, “If additional sheets are required for Schedules A or B, place all itemization on those sheets and include only category totals on these schedules,” be changed? Is there a single instruction that will be observed by all probate courts, and if not, should the instruction be removed? MCL 600.855 requires that if an SCAO-Approved form exists, it must be used. That means an SCAO-Approved form cannot be modified for differing local uses. During the 30-day public comment period, Cindy Rude of Calhoun responded “this question goes to preference – we offer no comment.”

5. PC 585a, Petition to Allow Account(s) and PC 585b, Order Allowing Account(s)

A suggestion has been made to consider modifying these forms for use with trusts in situations where a trustee who is bonded and who is requesting allowance of the final account so that the trustee can have the bond cancelled and the trust closed.

During the 30-day public comment period, Cindy Rude of Calhoun responded that for PC 585a, her court “would propose changing #6 to read: Allowance of my final account, and that I be discharged; that the bond be cancelled; that the file be closed.”

During the 30-day public comment period, Cindy Rude of Calhoun responded that for PC 585b, her court would ask the “following be put in the place of the current #8 and #9: The final account of the fiduciary is allowed. The fiduciary is discharged. Upon filing proof of proper transfer of remaining assets, the bond will be canceled, and the fiduciary will be discharged. The file is closed.”

6. PC 647, Order Approving Sale of Real Estate

A request has been made by Terry Beagle of Saginaw County Probate Court to change item 7 because it was confusing to an attorney. Apparently, the attorney was unclear whose name was to be placed on the line. Currently, item 7 says: “The sale of the property described above, to _____ for the sum of \$_____ and payable on the terms and conditions set forth in the petition, is approved.” It could be made clearer to adding the word “sold” after “The sale of the property described above, sold to . . . , for the sum of . . . approved.” Or, the caption could be changed from “Name” to “Name of buyer.” During the 30-day public comment period, Cindy Rude of Calhoun responded that there is “no need for change.”

D. Probate Estate Forms

7. PC 556, Petition and Order for Assignment

A request has been made by the Probate and Estate Planning Section of the State Bar of Michigan to add an instruction warning that the court may require the petitioner to file a Testimony, Interested Persons (form PC 565) pursuant to MCL 700.3982. A draft is provided. During the 30-day public comment period, Cindy Rude of Calhoun responded that there is “no need for change.”

8. **PC 559, Petition for Probate and/or Appointment of Personal Representative and PC 594, Petition for Adjudication of Testacy and Complete Estate Settlement**

A request was made in 2006 by Judge Thomas B. North of the Sixth Probate Court to state specifically in the “request” portion of the form “that the court find the will is valid and admit it to probate.” The Forms Committee reviewed the request, agreed to a change, but used slightly different language on both the forms. Shortly after the meeting, Judge North requested the Committee reconsider the language used. During the 30-day public comment period, Cindy Rude of Calhoun responded that her court recommends “that a request be added to the petition to parallel the order: __ The will and codicil(s) be found valid and be admitted to probate.”

9. **PC 572, Letters of Authority**

A request has been made by the Probate and Estate Planning Section of the State Bar of Michigan to preprint a certified copy fee of \$12.00 pursuant to MCL 600.2546, in order to compel uniformity of practice. A draft is provided.

10. **PC 587, Notice of Continued Administration**

A request has been made by Terry Beagle of the Saginaw County Probate Court to expand the note in item 3 so that it is clearer it doesn’t apply only to a change of address for interested persons who were listed in the initial petition/applications. There are situations where unpaid creditors can become known who were unknown at the time the initial petition/application was filed, and those claimants should also be added to item 3. Is it sufficient to include language in item 3 as follows: “(for each person whose address changed, list the name and new address; also include the name and address of any unpaid creditor who has become known since the filing of the initial application/petition; attach separate sheet if necessary)?” During the 30-day public comment period, Cindy Rude of Calhoun responded that her court recommends adding “#4 to the form: The following are unpaid creditors at the time of this filing.”

11. **PC 589, Notice of Intent to close Estate Administration and Terminate Personal Representative’s Authority and PC 593, Petition for Complete Estate Settlement, Testacy Previously Adjudicated**

Terry Beagle of Saginaw County Probate Court inquires how to make it clear in item 3b that neither PC 593 nor PC 594 are the petitions being referred to in the second bullet. Currently, there is no petition for an interested person to use. Should an instruction be added to make this clear? Also, should a new petition be created for this purpose or can PC 593 for use by interested persons. It has been suggested that an option be added to item 1 indicating that the petitioner is an interested person and an option be added to item 6 requesting the court to order the personal representative to file a final account and any other necessary paperwork to complete the estate. During the 30-day public comment period, Cindy Rude of Calhoun responded that her court recommends adding to PC 589 “a bullet under 3b for a petition to remove PR and appoint successor,” and that her court agrees with the suggested changes to PC 593.

12. PC 590, Sworn Closing Statement, Summary Proceeding, Small Estates

It is suggested the form be revised to state more fully what MCL 700.3988 states. Items 4 and 6 would be changed accordingly. During the 30-day public comment period, Cindy Rude of Calhoun responded that there is “no need for change.”

13. PC 591, Sworn Statement to Close Unsupervised Administration

A suggestion has been made by Pam Jarvis of Barry County Probate Court to revise item 2 to make it clearer that it only applies when publication is required by law. There are several situations in which publication is not required (see MCR 5.306[C][2] for some of those situations), and the current language of the item implies that the publication is required. It is suggested that item 2 be preceded by a check box. Also, it has been pointed out that item 3 should be revised to state more fully what MCL 700.3954(1)(b) states with regard to the payment of costs. Specifically, both estate and administration expenses should be referred to as follows: “I have fully administered this estate by paying, settling, or disposing of the claims that were presented, of estate and administration expenses, and of estate, inheritance, and other death taxes. I have distributed the assets of the estate to the persons entitled to the assets.*”

14. New Form, Affidavit of Incumbency

A request has been made by the Probate and Estate Planning Section of the State Bar of Michigan to develop a new form, Affidavit of Incumbency, for use under MCR 5.501(E). A draft is provided. During the 30-day public comment period, Cindy Rude of Calhoun responded that her court suggests “the use of PC 610, Registration of Trust, with modifications if necessary.”

E. Guardianship and Conservatorship Forms**15. PC 625, Petition for Appointment of Guardian of Incapacitated Individual**

A request has been made by the Probate and Estate Planning Section of the State Bar of Michigan to make it clearer when PC 658 should be used instead of PC 625. A draft is provided. Also, does the form need to be revised pursuant to MCL 700.5302?

Finally, there is a conflict between MCR 5.125(C)(22) and MCL 700.5311(1)(a) with regard to interested persons. The problem appears to stem from the 1972 court rules. The current court rule is taken, almost verbatim from PC 109.2(24), however, there is an important caveat to that rule that was not carried over to the current court rule. The first statement in PCR 109.2 was “. . . if the interested parties are not defined by statute or court rule, interested parties in a (petition) . . . (are) . . .” The original Probate Code did not specify who the interested parties were in a guardianship proceeding; therefore, the court rule provided that crucial information. When the Probate Code was revised in 1978, it included a list of who the interested parties are. However, the court rule was never amended to reflect that. In matters of practice, court rules take precedence when there is a conflict with rule of practice set forth in both court rule and statute. The question here is

whether the definition of interested parties is a procedural or substantive matter and whether the form should be revised to reflect the interested parties as defined in statute.

During the 30-day public comment period, Cindy Rude of Calhoun responded “because age is not the only factor to consider when determining whether or not to file legally incapacitated versus developmentally disabled, we believe that the suggested addition under #6 would NOT help but possible create more confusion. Also, regarding the conflict between statute and court rule, Judge Harter notes the discrepancy and comments that it would be easier to change the court rules than legislation.”

16. PC 638b, Order Regarding Appointment of Guardian for Individual with Developmental Disability

It has been suggested that an option should be added for a successor guardian to file a bond. During the 30-day public comment period, Cindy Rude of Calhoun responded that her court agrees with the suggested change.

17. PC 639, Petition for Appointment of Conservator and/or Protective Order

There is a conflict between MCR 5.125(C)(24) and MCL 700.5405 with regard to interested persons. The problem appears to stem from the 1972 court rules. The current court rule is taken, almost verbatim from PC 109.2(24), however, there is an important caveat to that rule that was not carried over to the current court rule. The first statement in PCR 109.2 was “. . . if the interested parties are not defined by statute or court rule, interested parties in a (petition) . . . (are) . . .” The original Probate Code did not specify who the interested parties were in a guardianship proceeding; therefore, the court rule provided that crucial information. When the Probate Code was revised in 1978, it included a list of who the interested parties are. However, the court rule was never amended to reflect that. In matters of practice, court rules take precedence when there is a conflict with rule of practice set forth in both court rule and statute. The question here is whether the definition of interested parties is a procedural or substantive matter and whether the form should be revised to reflect the interested parties as defined in statute. During the 30-day public comment period, Cindy Rude of Calhoun responded that Judge Harter notes the discrepancy and comments that it would be easier to change the court rules than legislation.

18. PC 642, Order Appointing Guardian Ad Litem/Attorney/Lawyer Guardian Ad Litem

It has been suggested that reference to 24 hours be replaced with a blank in item 4. There is no specific authority for the 24 hours and a court may require a different minimum time frame for filing the report.

19. PC 657, Order Following Hearing to Terminate Minor Guardianship

It has been suggested that the following sentence be added to item 10 because, occasionally, a parent needs that extra proof when required by a school or some other government entity: “The minor is returned to the home of the parent who had custody prior to the guardianship.”

20. PC 669, Proof of Restricted Account and Annual Verification of Funds on Deposit

A request has been made to revise this form so that it can also be used for adult conservatorships. A similar request was made last year, but for use with guardianships. The Committee declined to create a statewide form for that purpose.

A request has been made to create two additional forms when there are no assets in the conservatorship. Is this necessary, or can PC 669 be modified to accommodate this. Drafts of the two forms are provided.

During the 30-day public comment period, Cindy Rude of Calhoun responded that her court would “propose to remove (Conservatorship of Minor) from title of form, so it can be used for any conservatorship. We would oppose the creation of new forms, suggesting instead that the current form be modified to accommodate the request by adding the following: __As of this date, I have not received any assets for the ward (signature of fiduciary). I declare under penalties of perjury . . . (taken from proposed new form).”

21. Petition and Order to Use Funds

A request has been made to develop a petition and order for use of funds in a conservatorship. During the 30-day public comment period, Cindy Rude of Calhoun responded that her court agrees “that a SCAO approved form would assist with uniformity.” See draft from Calhoun County.

F. Mental Health Forms

22. PCM 201, Petition/Application for Hospitalization

Last year the Committee reviewed comments from Elizabeth Warner about the appropriateness of combining the petition and application. The Committee concluded that the application and petition need not be separated because the statutes clearly delineate in what situations the application is appropriate and in what situations the petition is appropriate. Ms. Warner asks the Committee to reconsider its decision.

Also, the authority for requiring a personal observation in item 4a is questioned. MCL 330.1434 says nothing about needing personal observation.

Finally, a request has been made to add MCL 330.2050 to the foot of the form since the form can be used as a result of a defendant who has been found not guilty by reason of insanity under that statute. During the 30-day public comment period, Cindy Rude of Calhoun responded that her court agrees “with the proposal to add the citation to the bottom of the form. However, we see no need for any other changes.”

23. PCM 240, Petition and Order to Transport Minor

A request has been made to clarify that, if this petition is not being filed by the director of the hospital, only a parent or guardian can file it. This could be done by requiring the

petitioner to indicate on the form his or her relationship to the minor. During the 30-day public comment period, Cindy Rude of Calhoun responded that her court agrees “with the proposed change, pursuant to MCL 300.1498d(1)(a).”

24. PCM 241, Notice of Right to Request Hearing

Last year, the Committee was asked whether this form should be designed so that it could be used when an individual is returned to a hospital by a psychiatrist’s order as permitted pursuant to MCL 330.1474a and 330.1475a. The Committee agreed that the use of this form should be expanded and made suggested changes to the form. After the meeting, the SCAO recommended to the Committee that the rule first be amended to more accurately reflect the statutes before revising the form. Another request was made shortly afterward to expand the use of PCM 241 for the same purpose.

MCR 5.744 was amended, effective January 1, 2007. SCAO recommends a separate form be developed for use with a return pursuant to a psychiatrist’s order because the basis for the request is much different and it would complicate the form too much. Right now, it is clear that PCM 241 is used in conjunction with PCM 230 when the court has entered a modified order without a hearing (PCM 217a). It would be much clearer if another form was developed for use in conjunction with PCM 230 when a psychiatrist has ordered the return to the hospital.

During the 30-day public comment period, Cindy Rude of Calhoun responded that her court agrees “with the need for a/the form to accommodate the statute which allows the subject to be returned to the hospital under a psychiatrist’s order. The middle sentence in the top of the form could be reworded as: You have been returned to the hospital because: ___the psychiatrist ordered your return; or ___the court entered a modified order after being notified that ___ the alternative program was insufficient, ___ you did not comply with the alternative program. In the alternative, we are attaching the form currently used by our CMH/hospitals as a sample, which could be used as a separate, new form.” See draft.

25. New Forms, MCL 330.1519

Is it necessary to create forms pursuant to MCL 330.1519? During the 30-day public comment period, Cindy Rude of Calhoun responded that forms are not necessary.

Attachments

cc: Nial Raaen, Director, Trial Court Services
Anne Boomer, Supreme Court
Sally LaCross, Supreme Court
Jill Booth, Trial Court Services
Judicial Information Systems
Regional Administrators